Tuesday, July 21, 2026.

Re: Opposition to ordinance prohibiting the retail sale of nitrous oxide, and request for amendments (File No. 260495)

To the Honorable Members of the Board of Supervisors,

On behalf of ten civil rights and community organizations serving vulnerable San Francisco communities, we are writing to oppose Ordinance File No. 260495 [Police Code – Prohibiting the Retail Sale of Nitrous Oxide], now before the Budget and Finance Committee, as currently drafted. The ordinance would ban the retail sale of nitrous oxide, prohibit individuals from possessing larger quantities, and make violations a misdemeanor or an infraction, with the misdemeanor punishable by up to 6 months in county jail and a fine.[1]

We understand that the misuse of nitrous oxide can cause real harm, and we share the goal of reducing harm and increasing public education around this issue. Our objection is that the proposed ordinance would commit substantial public funds to a new enforcement program that the City's own Budget and Legislative Analyst says the City cannot yet justify due to a lack of data. It would extend conduct already unlawful under state law, in a way that targets individuals and falls hardest on the vulnerable communities the City has worked to protect.

The City does not know whether that enforcement is needed. In the BLA's words, "the City government lacks data on the scope of the nitrous oxide problem in San Francisco".[2] Statewide emergency-department visits tied to nitrous oxide have risen, but no one has measured the local problem: how many San Francisco retailers are selling it for misuse, how many local hospitalizations have resulted, or what the complaint volume is. Other counties, including Humboldt and Orange, surveyed the problem before acting; San Francisco has not. For that reason, the BLA recommends amending the ordinance to require Environmental Health to

evaluate the local scope of the problem and to require the enforcing departments to report back on the actions they take.[2] We strongly agree, and urge the Board to go further: **the City should not fund or begin active enforcement until that assessment shows a genuine local problem that existing law cannot address.**

The ordinance commits substantial public funds to a problem the City has not measured in any way. The Budget and Legislative Analyst estimates that the ordinance would cost approximately $592,000 in fiscal year 2026–27 and $630,000 in 2027–28, paid from the General Fund, most of it new environmental-health staffing at the Department of Public Health, with the remainder in Police Department overtime to accompany inspections.[2] The BLA believes the departments could absorb these responsibilities within their existing budgets, but absorption is not the same as free: it redirects roughly $600,000 in General-Fund inspector and officer time each year, including capacity that would otherwise support the food-safety program, away from existing public-health and public-safety work to enforce a new ban.

Beyond its cost, the ordinance carries four further problems.

First, it reaches individuals, not merely retail sellers. The ordinance does not stop at banning sales; it prohibits individual possession of larger quantities and, under Section 4002(b), treats such possession as a presumption of intent to distribute. The BLA found that this feature, extending the prohibition to individuals rather than just businesses, applies only to one out of the many California jurisdictions it examined.[2] A person found in possession can thus face criminal charges and be put to proving lawful use, a burden-shift that raises serious due process concerns.

Second, the conduct is already unlawful under state law, and the ordinance is harsher than the statewide ban currently moving through the legislature. California Penal Code Section 381 already makes it a misdemeanor to sell or possess nitrous oxide for intoxication, bars its sale to minors, and requires sellers to record and retain purchaser information, all enforceable by up to six months in jail and a fine of up to $1,000.[3] Meanwhile, Senate Bill 936 would ban retail nitrous sales statewide as an infraction, with no possibility of jail, and is expected to take effect on January 1, 2027.[4] **San Francisco would thus duplicate state law, authorize jail where the State would not, and stand up a more than half a million dollar local enforcement program months before a statewide ban arrives.**

Third, the fines and enforcement will fall hardest on low-income residents, struggling small business owners, and communities of color. Enforcement would likely be aimed at corner stores, and the ordinance stacks escalating administrative fines and civil penalties, none tied to ability to pay, on top of possible jail for a repeat offense. Research consistently shows that fines and fees of this kind fall disproportionately on low-income households and on Black and Latino residents,[5] a harm San Francisco has spent nearly a decade working to undo through initiatives such as the Treasurer's Financial Justice Project.[6] Layering these penalties and new cases on a criminal system already beyond capacity runs directly against that work.

Fourth, the ordinance would add new cases and enforcement obligations to systems that are already operating beyond capacity. Creating new misdemeanor charges, inspections,

citations, prosecutions, and related court proceedings will consume resources across the Police Department, Department of Public Health, City Attorney, District Attorney, Public Defender, and Superior Court. The City should not expand its criminal and administrative enforcement systems without first establishing both the need for the program and its likely effectiveness.

If the City must act, the response should fit the problem and its cost: measure the local problem before funding enforcement, keep any enforcement civil and administrative and aimed at retail bad actors, and rely on the state tools already available. Because we understand the measure has substantial support, we set out below four potential amendments, the first of which tracks the BLA's own recommendation, that would materially reduce its harms and its cost if the Board proceeds.

Proposed Amendments

1. Study the issue in SF first, before implementing this ordinance. The BLA recommends amending the ordinance to require Environmental Health to evaluate the local scope of the nitrous oxide problem and to require the enforcing departments to report back on enforcement actions taken. We support that recommendation and urge the Board to go further: do not appropriate funds for, or begin, active enforcement until that assessment is complete and shows a genuine local problem that existing state law cannot address; sunset any program after two years absent reauthorization on updated data; and include the Public Defender among the departments reporting back, together with data on individuals offered treatment.

2. Remove criminal enforcement; rely on civil and administrative tools and build in public education. Strike Section 4004 and enforce the ordinance through the Department of Public Health's permit and environmental-health authority and the City Attorney's civil authority already provided in Sections 4005–4006, the tobacco-permit compliance model on which the program is built. If any penal exposure is retained, it should be an infraction only, consistent with pending Senate Bill 936; it should not apply to individual possessors; the "every day a separate offense" provision in Section 4004(d) should not apply to individuals; and any charge should be made eligible for treatment or collaborative-court diversion. There should also be a public education campaign accompanying these administrative tools aimed at helping people understand the harm of nitrous oxide.

3. Strike the individual-possession provision. Delete the individual-possession prohibition and the Section 4002(b) presumption, which reach individuals rather than sellers and shift the burden of proof onto the accused.

4. Target enforcement and bar street-level stops. Direct DPH to conduct complaint-driven inspections of retailers (consistent with the Department's existing tobacco-compliance operations and the BLA's observation that a local assessment could allow "less costly and more targeted enforcement") and expressly prohibit using this Article as a basis to stop, search, detain, or cite individuals.

We urge the Board of Supervisors to oppose Ordinance File No. 260495 as drafted. Should the Board move it forward, however, we urge that it be amended as set out above, beginning with the scope assessment the BLA itself recommends, so that the City can address the genuine

harms of nitrous oxide misuse without committing substantial public funds to an unproven, duplicative, and inequitable new criminal program.

Respectfully,

ACLU -NorCal

All of Us or None

Center on Juvenile and Criminal Justice

Coalition on Homelessness

Full Picture Justice

Legal Services for Prisoners with Children

San Francisco AIDS Foundation

San Francisco Public Defender

Sister Warriors Coalition

Young Women's Freedom Center

Sources / Footnotes

[1] Ordinance File No. 260495 (BLA File 26-0495), "Police Code – Prohibiting the Retail Sale of Nitrous Oxide," San Francisco Board of Supervisors. https://sfgov.legistar.com/View.ashx?M=F&ID=15448192&GUID=8EFCECBB-9490-48D4-8471-A4D5BCAE5B9C

[2] San Francisco Board of Supervisors, Budget and Legislative Analyst, Report to the Budget and Finance Committee on File 26-0495 (meeting of July 22, 2026). https://sfgov.legistar.com/View.ashx?M=F&ID=15701665&GUID=7569F185-C89A-43D2-A386-2E88147C0E2B

[3] Cal. Penal Code § 381 and its subdivisions (§§ 381b, 381d, 381e): misdemeanor sale or possession for intoxication; prohibition on sale to minors; mandatory purchaser recordkeeping and warnings. See, e.g., https://codes.findlaw.com/ca/penal-code/pen-sect-381b/

[4] Senate Bill 936 (2025–2026, Blakespear), Nitrous oxide: sales (infraction-level statewide restriction on the sale and distribution of nitrous oxide containers over 8 grams; if enacted, effective January 1, 2027), California Legislative Information: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB936

[5] On fines and fees falling disproportionately on low-income households and on Black and Latino residents: Vera Institute, "Fines and Fees": https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities/fines-and-fees

[6] San Francisco Office of the Treasurer & Tax Collector, Financial Justice Project (launched 2016; the nation's first government-embedded effort to reform fines and fees), now part of the Economic Justice Center: https://treasurer.sf.gov/economicjustice

DRUG POLICY ALLIANCE.

July 20, 2026

Dear Board of Supervisors,

The Drug Policy Alliance has several concerns with File No. 260495, the ordinance entitled 'Police Code - Prohibiting the Retail Sale of Nitrous Oxide.'

The Drug Policy Alliance (DPA) is the leading organization in the U.S. working to address the harms of drug use and drug criminalization. We advocate for approaches to drugs that prioritize health, equity, social supports, and community wellbeing. Rather than punitive responses to drug use, the state should invest in evidence-based and health-centered interventions for people who use drugs, their families, and their communities.

We all want to protect the health and safety of consumers and reduce the harms that may result from the use of certain substances. This ordinance, however, would commit substantial public funds to a new enforcement program that the City's own Budget and Legislative Analyst concluded cannot yet be justified because the necessary data does not exist. It would establish new penalties that could be levied against individuals, with the greatest impact likely falling on the very communities the City has worked to protect.

Although the measure may have been intended to deter the retail distribution of nitrous oxide, the ordinance would also criminalize individuals who "offer" or "provide" nitrous oxide to another person. While the stated purpose is to protect young people from nitrous oxide misuse, the ordinance would instead expand criminal liability in a way that could harmfully draw youth and other individuals into the criminal legal system.

Decades of research demonstrate that criminalization is not an effective response to substance use. Criminal penalties create instability, limit access to employment and housing, increase the risk of overdose, and can push people toward more dangerous and unregulated substances. A substantial body of evidence has found that expanding criminal penalties neither reduces drug supply nor lowers overdose rates.[1] Instead, it creates a dangerous cycle that exposes people who use drugs to newer and potentially more dangerous alternatives from unknown sources. Effective responses prioritize prevention, treatment, harm reduction, and supportive services—not punishment.

[1] The Pew Charitable Trust. (2022, February). Drug Arrests Stayed High Even as Imprisonment Fell From 2009 to 2019. Racial disparities in enforcement narrowed substantially but remained significant. https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019

Rather than hastily expanding criminal penalties, local policymakers should invest in proven public health interventions. These include improving access to mental health and addiction care, expanding overdose prevention and harm reduction services—including community-based drug checking programs—and supporting peer- and youth-led outreach programs.

For these reasons, we urge the Board to reject File No. 260495 and instead pursue evidence-based, public health-centered policies that improve community safety without expanding unnecessary criminalization. For more information about DPA or our concerns, please contact me at ggardner@drugpolicy.org. Thank you for your consideration.

Sincerely,
Grey Gardner
California State Director
Drug Policy Alliance